



February 4, 2021

Delivered via email

To: Steve Padilla, Chair, California Coastal Commission
Karl Schwing, District Director, San Diego Coast

Re: Item W18b, Application No: 6-20-0200, Applicant: Seascape Shores Homeowners Association

Dear Chair Padilla and District Director Schwing,

We are writing to oppose approval of a Coastal Development Permit (CDP) to repair and reconstruct a portion of a private beach access stairway for the Seascape Shores condominiums. We opposed the application for extensive repairs made to the City of Solana Beach in 2018, and continue to oppose this project as it violates the Coastal Act and the intentions of Solana Beach's certified Land Use Plan (LUP). We object for the following reasons:

1. The original, pre-Coastal Act staircase was illegally built in violation of county permits.
2. The current private stairway is a new stairway that does not predate the effective date of the Coastal Act; therefore, it should not be considered 'existing' development. Additionally, this new stairway relies on a seawall, which is not allowed per the Coastal Act.
3. The new, post-Coastal Act private staircase is located on public lands.
4. If the CDP is granted, then it must include a condition requiring public access to the stairway. Adding a public stairway is consistent with the guidance in the Solana Beach Land Use Plan (Policy 2.60.5).
5. Because Solana Beach does not have a Certified Local Coastal Plan, the standard of review is the Coastal Act.

The original, pre-Coastal Act staircase was illegally built

Any characterization of the original staircase as 'permitted' ignores the history of this condo association. The 'History of Structure' portion of the staff report misses this important point:

"Based on photographs from 1972, the existing 51-unit bluff top condominium complex (i.e., Seascape Shores) at the subject site was under construction in 1972, prior to the enactment of the Coastal Act, and permitted by the San Diego County Board of Supervisors.... " (page 15, staff report)

It is true that the condo complex was approved for construction in 1970, prior to enactment of the Coastal Act. However, the Planning Commission explicitly denied the condo complex a private beach access as part of that original permit¹:

VI. Planning Commission Proceedings
A. Decision of the Commission on December 18, 1970
"DENY, the proposed ramp for access to the beach; but
GRANT, as per plot plan, a special permit in accordance with Ordinance 3534 (New Series) to allow grading for the construction of a condominium development, on condition that prior to the issuance of any permit pursuant to this special permit, the applicant shall grant to the County without cost an easement over the westerly portion of the property lying below the ten-foot elevation line."³

The Commission further clarified its reasons for its decision with the understanding that *'all construction will take place behind the bluff line'*:

The proposed use of the land will be consistent with the orderly, efficient and balanced development of the coastal shoreline area, and reasonable protection of the bluffs and beach area is not involved in this request as all construction will take place behind the bluff line.

Despite this explicit restriction, the condo complex directly violated the terms of the 1970 permits by illegally building a private beach access. By 1972, the condo association further violated these agreements by illegally constructing an erosion retaining wall and two erosion baffles without applying for appropriate permits.²

¹Staff report Appendix A: Excerpts of The Broken Promises (page 49)

²Staff report Appendix A: Excerpts of The Broken Promises (page 52)

B. Violations of Zoning Ordinance

As mentioned above in the letter from Mr. Cherrier of March 31, 1972, a retaining wall was erected on the bluffs in violation of Section 458.32 of the Zoning Ordinance. This violation was compounded when the developer built additional structures on the bluffs again without a permit. Since these structures were constructed after June 3, 1971, they also were in violation of the CD Coastal Development Overlay Zone. These offending structures were first described in the

It is important to recognize the history of violations that have gotten us to this point. After-the-fact permits for the illegal seawall and bluff structures were granted by the Planning Commission over the objections of the Solana Beach Town Council. As The Broken Promise document explains: *'the illegal actions...were excused...no punitive action has been taken against the developer, thus encouraging the flouting of the Zoning Ordinance...'*¹³.

The staff report cites LUP Policy 4.14 to support repair and maintenance of this staircase:

Existing, lawfully established structures that are located between the sea and the first public road paralleling the sea (or lagoon) built prior to the adopted date of the LUP that do not conform to the provisions of the LCP shall be considered legal nonconforming structures. Such structures may be maintained and repaired, as long as the improvements do not increase the size or degree of non-conformity. (emphasis added)

As we have shown above, any characterization of the original staircase as lawfully established ignores the permit history of the staircase and this condo association. As no pre-Coastal Act permit for the stairs has been identified, and the developer of the condos repeatedly flouted permits and zoning ordinances when building Seascape Shores, it is safe to assume that the pre-Coastal stairs were never lawfully established.

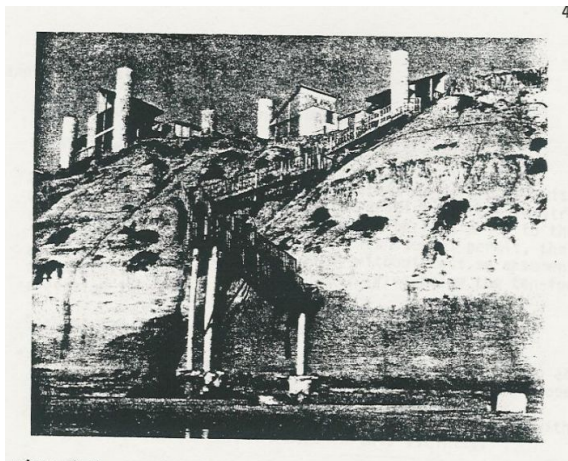
The staircase is new development that is reliant on a seawall

The fact is, the original staircase that was constructed prior to the Coastal Act effective date no longer exists. Therefore, the condo association does not have any

³Staff report Appendix A: Excerpts of The Broken Promises (page 53)

right to the continued use of a private beach access because the stairway is located on public property.

From historical photos, it appears the original staircase was illegally built in 1972, and it was partially destroyed that year. Sometime between 1972 and 1979, the destroyed portion of the stairs was replaced. Photographs of the staircase from 1972 (prior to the Coastal Act) show it is clearly a different staircase than existed in 1979 (after the Coastal Act).



November 1972 staircase (partially destroyed)⁴



1979 staircase⁵

⁴ Staff report Appendix A: Excerpts of The Broken Promises (page 48)

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<http://www.californiacoastline.org/cgi-bin/image.cgi?image=7955025&mode=big&lastmode=timecompare&flags=0&year=1979>

The two photographs below show the subject property in 1972, and it is clear there was no stairway in 1972 when the property was still under construction.⁶



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<https://www.californiacoastline.org/cgi-bin/image.cgi?image=7241048&mode=sequential&flags=0&year=1972>

The staff report explains how the 1979 staircase was in fact reconstructed again in 1980 (page 15):

"In 1980, the County of San Diego issued CUP No. P79-066 for the construction of a seawall and notch infill to protect the existing condominium at the top of the bluff from erosion including reconstruction of the stairway to correct existing structural deficiencies. The San Diego Coast Regional Commission then issued CDP No. F9143 for the erosion control measures at the base of the bluff...A seacave that was described as 70ft. in depth and 18ft. high was also filled and a 58ft.- long, 18ft.-high seawall was constructed on the face of the seacave fill. In addition, in order to fill the seacave, a portion of the existing private access stairway was removed and reconstructed with a new caisson footing that was incorporated into the seacave fill/seawall...CDP No. F9143 also allowed for the existing stairway to be reconstructed with new landing and stair sections."



1979⁷ - no seawall



1989⁸ - new staircase relies on seawall

The permit and photographic history demonstrates that the staircase of the 1980s is different from the staircase of the 1970s, and thus the staircase should not be considered 'existing.' The private staircase violates Coastal Act Section 30253, as it

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<http://www.californiacoastline.org/cgi-bin/image.cgi?image=7955025&mode=big&lastmod e=timecompare&flags=0&year=1979>

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<http://www.californiacoastline.org/cgi-bin/image.cgi?image=8920171&mode=big&lastmod e=timecompare&flags=0&year=1989>

constitutes new development that both alters the natural landform and also requires a protective device:

Section 30253: New development shall: (1) minimize risks to life and property in areas of high geologic, flood, and fire hazard; (2) assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site, or surrounding area, or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs

The staff report takes pains to point out that the current proposed construction activities should not be considered 'redevelopment' since the 50% redevelopment threshold is not being crossed at this point. However, this argument misses the point entirely. The 50% redevelopment threshold is to be applied only to 'existing permitted', i.e. legal pre-Coastal Act, staircases. **Because this staircase is not existing and violated the original construction permits, the 50% replacement threshold does not apply.** However, LUP Policy 2.60, which states that '*private beach stairways shall be phased out*' does apply, given the stairway is new development:

No new private beach stairways shall be constructed, and private beach stairways shall be phased out at the end of the economic life of the stairways. Existing permitted or private beach stairways constructed prior to the Coastal Act may be maintained in good condition with a CDP where required, but shall not be expanded in size or function. Routine repair and maintenance shall not include the replacement of the stairway or any significant portion of greater than 50% of the stairway cumulatively over time from the date of LUP certification.

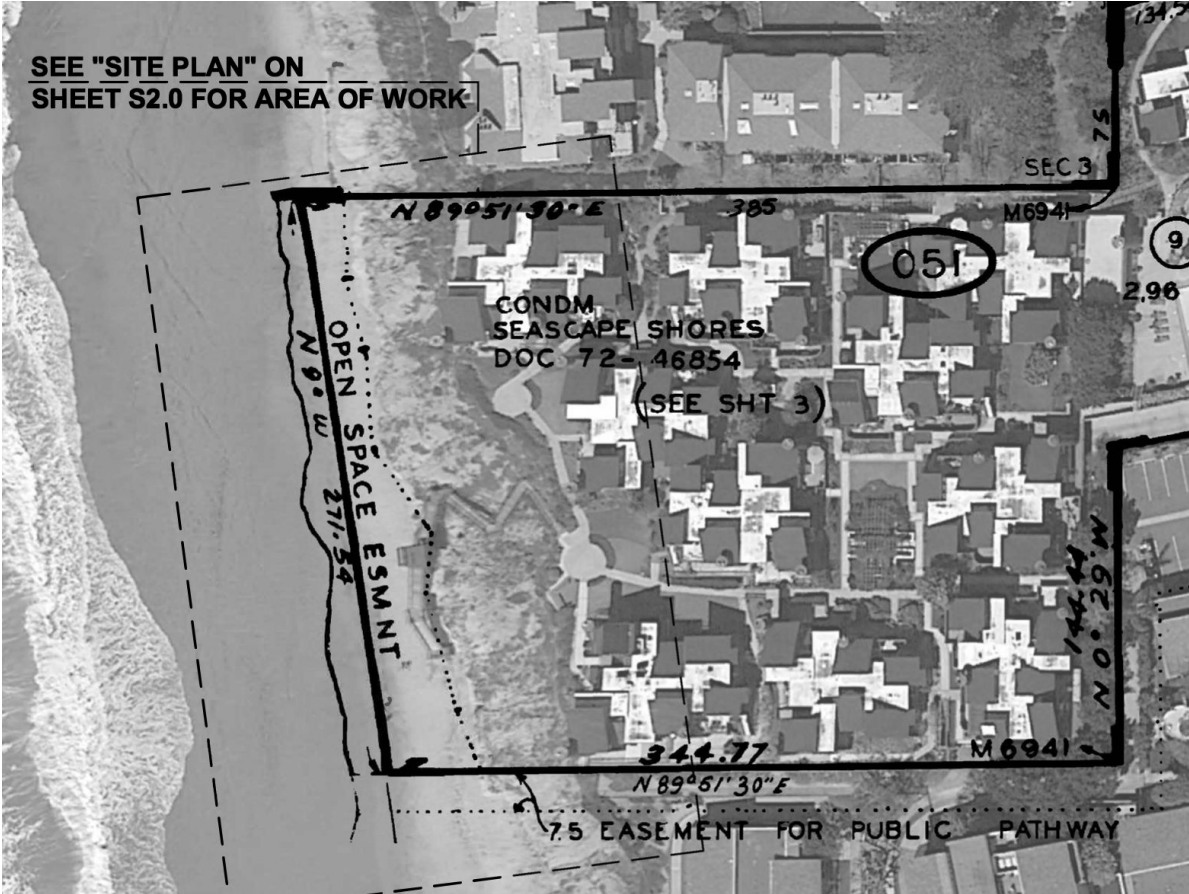
The photographic evidence and permit history above clearly show this current, new staircase is not existing, and the original staircase was not permitted.

The new private staircase is located on public land

The 1970 permits for the Seascape Shores condos required a public easement:

"Deny, the proposed ramp for access to the beach, but grant, as per plot plan, except as noted below, a special permit in accordance with Ordinance 3534 (New Series) to allow grading for and construction of a condominium development, on condition the prior to the issuance of any permit, pursuant to this special permit, the applicant shall submit a revised plot plan to be approved by the Director of Planning showing detailed plans to indicate that no building will be located closer than 90 feet to the most westerly property line, and shall grant to the County, without cost, an easement over the westerly portion of the property lying below the ten-foot elevation line."²

Therefore, both the original, illegal staircase and the current, new staircase have been occupying public lands for almost 50 years.



Mitigation in the form of public access is appropriate

The Coastal Act mandates increasing public access where feasible. Section 30212 states:

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects ...

Chapter 4 of the Solana Beach LUP also makes clear that only principal existing structures may rely on a seawall:

The City's preference for protecting existing principal structures in danger from erosion is relocating/rebuilding the principal structure on the site to a location that is stable per LUP Policy 4.25. If all feasible alternatives to mid and upper bluff protection have been excluded, then the following types of upper bluff retention systems may be utilized when collapse of the mid and upper bluff threatens an existing principal structure...(Land Use Provisions, page 13)

Policy 4.22: No bluff retention device shall be allowed for the sole purpose of protecting an accessory structure.

Policy 4.32: When bluff retention devices are unavoidable, encourage applicants to pursue preferred bluff retention designs as depicted in Appendix 2 of the LUP when required to protect an existing principal structure in danger from erosion.

Policy 4.38: Maximize the natural, aesthetic appeal and scenic beauty of the beaches and bluffs by avoiding and minimizing the size of bluff retention devices, preserving the maximum amount of unaltered or natural bluff face, and minimizing encroachment of the bluff retention device on the beach, to the extent feasible, while ensuring that any such bluff retention device accomplishes its intended purpose of protecting existing principal structures in danger from erosion.

Policy 4.53: No permit shall be issued for retention of a bluff retention device unless the City finds that the bluff retention device is still required to protect an existing principal structure in danger from erosion, that it will minimize further alteration of the natural landform of the bluff, and that adequate mitigation for coastal resource impacts, including but not limited to impacts to the public beach, has been provided.

The LUP does make room for shoreline protection of public access points:

Policy 4.20: Existing, legal non-conforming publicly-owned facilities that are coastal-dependent uses such as public access improvements and lifeguard facilities located within 40 feet of the edge of the bluff edge, may be maintained, repaired and/or replaced as determined necessary by the City. Any such repair or replacement of existing public facilities shall be

designed and sited to avoid the need for shoreline protection to the extent feasible.

Likewise, LUP Policy 2.60.5 specifically directs that private stairways be converted to provide public access where feasible::

"...private beach accessways shall be converted to public accessways where feasible and where public access can reasonably be provided."

The private staircase currently relies on a seawall, which runs contrary to all provisions of the city's LUP that only allow for protection of principal structures or public access points.

We note that the 1970 permit for the Seascape Shores condominiums relied on a finding by the County Planning Commission, per its 'Reasons for Decision of the Commission,' which understood that no development would take place beyond the bluff line:

"The proposed use of the land will be consistent with the orderly, efficient and balanced development of the coastal shoreline area, and reasonable protection of the bluffs and beach area is not involved in this request as all construction will take place behind the bluff line"⁹ (emphasis added)

The stairs are clearly located seaward of the bluff line on public land as well as traversing a public easement, and construction activities have occurred past the bluff line at least three times since the 1970 permit was originally approved.

Mitigation in the form of conversion to a public access is the minimal possible action to take given this ongoing imposition on public lands.

Surfrider has detailed one possible avenue for pursuing mitigation in the form of public access in our October 2019 letter regarding a CDP application for this stairway¹⁰. In this letter, Surfrider recommended converting the stairs to a combined public access and private stairway. There are several options for a shared-use model:

- Join the existing stairs from the public access along the south side of the condominium
- Create a new shared public and private access along the southern property line
- Create a public access easement through the property to the stairs from the existing public trail on the southern boundary

⁹ Staff report Appendix A: Excerpts of The Broken Promises (page 50)

¹⁰ W18b-2-2021 exhibits, pages 38-46

The California Coastal Act is still the standard of review

While we recognize that the City's LUP should be used as guidance, the Coastal Act is still the standard of review. The staff report states:

"...the Commission has a legal obligation to consider the proposed project in light of the LUP. Even where an LCP is not completely certified, the Commission must consider a certified LUP as a source of policy and must explain the reasons for deviating from it. ((Douda v. California Coastal Com. (2008) 159 Cal.App.4th 1181, 1194-1195)." (page 25 emphasis added)

In the Douda case, the appeals court upheld the Coastal Commission's decision to deny the Doudas a CDP to build a home as it was located in an environmentally sensitive habitat area, even though the Los Angeles County LUP had not designated the land as such. This appeals court decision supports the Coastal Commission's right to deviate from a certified LUP if such a decision can be justified.

The staff report confirms the Coastal Act is still the standard of review:

The City of Solana Beach has a certified Land Use Plan (LUP). However, no implementing ordinances have yet been reviewed or approved by the Commission. Thus, the Chapter 3 policies of the Coastal Act remain the standard of review and the City's certified Land Use Plan is used as guidance. (page 27)

In the case of the Seascape Shores private staircase, the standard set by the Coastal Act makes clear that no new development may alter natural landforms or rely on a seawall.

Conclusions

To summarize, this private encroachment on public lands should not be perpetuated, as it already has survived years beyond its 'natural' lifetime. The current staircase does not predate the Coastal Act, and so it should not benefit from any protection in that respect. The staircase also relies on a seawall. Accessory structures are not allowed seawalls per the city's LUP. Likewise, new development is not permitted to rely on a seawall per the Coastal Act or the City's LUP. Reconstruction of a new stairway reliant on a relatively new seawall should not override the clear intentions of both the Coastal Act and the LUP to phase out development that occupies Solana Beach's public bluffs and beaches.

There are several feasible options to provide public access at this location. Providing public access is consistent with the access policies of the Coastal Act and the city's certified LUP. The subject site provides a rare and feasible

opportunity to provide new public access while maintaining privacy and access for the existing development.

The Seascapes Shores Condo Association has had no problem illegally encroaching on public easements for the last 45-50 years, but the public has the right to require vertical access to the public easement. The condo association has a choice: share their beach access with the public to address 50 years of illegal privatized beach access, or relinquish the private beach access. In this case, condo users could still use the two public beach access points two blocks north at Fletcher Cover or two blocks south at Del Mar Shores as everyone else is accustomed to using.

Sincerely,

Kristin Brinner & Jim Jaffee
Residents of Solana Beach
Co-leads, Beach Preservation Committee
San Diego Chapter, Surfrider Foundation

Laura Walsh
Policy Coordinator
San Diego Chapter, Surfrider Foundation